

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

RUSORO MINING LIMITED,

Petitioner-Appellee,

v.

BOLIVARIAN REPUBLIC OF
VENEZUELA,

Respondent-Appellant.

No. 18-7044

(D.D.C. No. 1:16-cv-2020)

MOTION FOR STAY

Respondent-Appellant the Bolivarian Republic of Venezuela (the “Republic”) respectfully requests a 120-day stay of proceedings in this case, which would result in an extension of time, to and including Monday, June 17, 2019, within which to file its opening brief and appendix in this appeal. A stay is necessary to allow the newly installed government of Juan Guaidó, Interim President of the Republic, sufficient time to evaluate its position in this and other cases involving the Republic currently pending in U.S. courts.

On January 23, 2019, Juan Guaidó, the President of the National Assembly declared himself Interim President of Venezuela, invoking Article 233 of the Venezuelan Constitution. That same day, President Donald Trump issued a

statement officially recognizing President Guaidó as the Interim President of Venezuela and rejecting the legitimacy of the Maduro government. *Statement from President Donald J. Trump Recognizing Venezuelan National Assembly President Juan Guaido as the Interim President of Venezuela* (Jan. 23, 2019), available at <https://www.whitehouse.gov/briefings-statements/statement-president-donald-j-trump-recognizing-venezuelan-national-assembly-president-juan-guaido-interim-president-venezuela/>.

Because the President has recognized President Guaidó as the rightful representative of the Republic, only President Guaidó or his representatives may assert the interests of the Republic in U.S. courts.¹ The decision of the Executive Branch to recognize a party as the rightful representative of the government of a foreign state is conclusive and binding on U.S. courts. *See Guaranty Trust Co. v. United States*, 304 U.S. 126, 138 (1938); *Zivotofsky ex rel. Zivotofsky v. Kerry*, 135 S. Ct. 2076 (2015); *see also* Restatement (Third) of Foreign Relations Law § 204 (“Under the Constitution of the United States the President has exclusive authority to recognize or not to recognize a foreign state or government.”). And only the representatives of a government that has been recognized by the United States have

¹ Arnold & Porter has appeared in U.S. courts in this and other matters on behalf of the Bolivarian Republic of Venezuela. President Guaidó’s government has instructed us to file this motion.

standing to sue in U.S. courts or otherwise can avail themselves of the U.S. judicial system. *See Pfizer v. Government of India*, 434 U.S. 308, 319–20 (1978). Where competing factions within a foreign government both seek to assert the interests of the foreign state, courts must recognize only that faction which has been recognized by the Executive Branch as rightfully representing the foreign state. *See Bank of China v. Wells Fargo Bank & Union Trust Co.*, 104 F. Supp. 59 (N.D. Cal. 1952), *aff'd Bank of China v. Wells Fargo Bank & Union Trust Co.*, 209 F. 2d 467 (9th Cir. 1953).

The transition will likely have far-reaching political, economic, and social consequences, both within the Republic and internationally. President Guaidó is currently staffing his government with the necessary legal advisors to evaluate the Republic's position in this appeal and other litigation in the United States.

In this very fluid circumstance, adequate time is necessary to ensure that the Republic is able to make fully informed decisions that protect the interests of the Republic during this crucial moment in Venezuela's history.

Counsel has conferred with opposing counsel. Due to the exigencies of time, Petitioner-Appellee has not informed us whether Petitioner-Appellee consents to the motion. The Court previously granted the Republic a 62-day extension, a 42-day extension, and a 60-day extension.

Respectfully submitted,

Dated: February 12, 2019

/s/ Kent A. Yalowitz

Kent A. Yalowitz

ARNOLD & PORTER KAYE SCHOLER LLP

250 West 55th Street

New York, NY 10019-9710

Telephone: +1 212.836.8000

Fax: +1 212.836.8689

kent.yalowitz@arnoldporter.com

*Attorney for the Bolivarian Republic of
Venezuela*

CERTIFICATE OF SERVICE

I hereby certify that on February 12, 2019, I electronically filed the foregoing document with the United States Court of Appeals for the District of Columbia Circuit by using the appellate CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated: February 12, 2019

/s/ Kent A. Yalowitz
Kent A. Yalowitz

CERTIFICATE OF COMPLIANCE

The undersigned certifies that the foregoing document complies with Fed. R. App. P. 27(d)(2)(A) and Fed. R. App. P. 32(g)(1) because it contains 510 words.

Dated: February 12, 2019

/s/ Kent A. Yalowitz
Kent A. Yalowitz